

DOH STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen
Executive Deputy Commissioner

April 30, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

PUBLIC

Kalimah Jenkins, Esq.
NYS Department of Health
Corning Tower – Room 2503
Empire State Plaza
Albany, New York 12237

Ross Jacoby, Esq.
230 Park Avenue
Suite 2240
New York, New York 10169

Alexander Jacoby, M.D.
230 Park Avenue
Suite 2240
New York, New York 10169

RE: In the Matter of Alexander Jacoby, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.99-89) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla
Enclosure

**STATE OF NEW YORK: DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

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COPY

IN THE MATTER

OF

**DETERMINATION AND
ORDER**

A. ALEXANDER JACOBY, M.D.

ORDER # 99-89

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DETERMINATION AND ORDER OF THE HEARING COMMITTEE

The undersigned Hearing Committee consisting of **DENNIS GARCIA**, chairperson, **IRWIN COHEN, M.D.**, and **DAVID SIBULKIN, M.D.**, were duly designated and appointed by the State Board for Professional Medical Conduct. **MARY NOE** (Administrative Law Judge) served as Administrative Officer.

The hearing was conducted pursuant to the provisions of Sections 230 (10) of the New York Public Health Law and Sections 301-307 of the New York State Administrative Procedure Act to receive evidence concerning alleged violations of provisions of Section 6530 of the New York Education Law by **A. ALEXANDER JACOBY M.D.** (hereinafter referred to as "Respondent"). Witnesses were sworn or affirmed and examined. A stenographic record of the hearing was made. Exhibits were received in evidence and made a part of the record.

The Committee has considered the entire record in the above captioned matter and hereby renders its decision with regard to the charges of medical misconduct.

SUMMARY OF PROCEEDINGS

Pre-Hearing Conferences: January 29, 1999

Hearing dates: February 4, 1999
April 5, 1999

Place of Hearing: NYS Department of Health
5 Penn Plaza
New York, New York

Date of Deliberation: April 5, 1999

Petitioner appeared by: Kalimah Jenkins, Esq.
Associate Counsel
NYS Department of Health

Respondent appeared: Ross Jacoby, Esq.
230 Park Avenue
Suite 2240
New York, N.Y. 10169

WITNESSES

For the Petitioner:

Ms. Lynch Morley, M.D.

For the Respondent:

A. Alexander Jacoby, M.D.

SIGNIFICANT LEGAL RULINGS

The Administrative Law Judge issued instructions to the Committee with regard to the definitions of medical misconduct as alleged in this proceeding. The Administrative Law Judge

instructed the Panel that Section 6530 (42) states that "Failing to comply with a signed agreement to practice medicine in New York state ... or refusing to repay medical education costs in lieu of such required service, or failing to comply with any provision of a written agreement with the state or any municipality within which the licensee has agreed to provide medical service, or refusing to repay funds in lieu of such service as consideration of awards made by the state or any municipality thereof for his or her professional education in medicine, or failing to comply with any agreement entered into to aid his or his medical education" is a violation of New York Education Law Section 6530.

FINDINGS OF FACT

The following findings of fact were made after review of the entire record. Numbers in parenthesis (T.) refer to transcript pages or numbers of exhibits (Ex.) in evidence. These citations represent evidence and testimony found persuasive by the Hearing Committee in arriving at a particular finding. Evidence or testimony which conflicted with any finding of this Hearing Committee was considered and rejected. Some evidence and testimony was rejected as irrelevant. The Petitioner was required to meet the burden of proof by a preponderance of the evidence. All findings of fact made by the Hearing Committee were established by at least a preponderance of the evidence. All findings and conclusions herein were unanimous unless otherwise noted.

FINDINGS OF FACT

1. A. Alexander Jacoby, M.D., Respondent, was authorized to engage in the practice of medicine in the State of New York (Exh. Pet. 2)

2. On April 5, 1982, Respondent made application for student loans to pay for his medical education (Respondent's Exh. D)

3. Respondent signed and agreed to pay for student loans (Resp. Exh. E, F, G, H, I, J, K, L).

4. The rights and responsibilities of the loan agreement stated that student loans are dischargeable in Bankruptcy after five years of the initiation of the loan (Resp. Exh. F, I, L)

5. On October 18, 1989, the Utah Bankruptcy Court granted the Respondent a discharge of his debts (Pet. Exh 5)

6. The Respondent's student loans were not dischargeable in the bankruptcy court action. (Pet. Exh 6)

7. In a letter dated January 23, 1999, the Respondent admits that the student loan was not discharged (Resp. Exh. O)

8. As late as April 2, 1999, the Department of Justice stated the Respondent failed to make any payments on the student loans (Pet. Exh. 10)

DISCUSSION

Based on the testimony of both the Department's witness and the Respondent, certain facts as to the Respondent receiving student loans to pay for his medical education and his failure to repay these loans are undisputed.

However, the Respondent's position was that the student loans were dischargeable in bankruptcy and he continued to hold that position throughout the hearing despite his being informed by the New York State Department of Health, U.S. Department of Justice and Utah to the contrary.

The panel found the Respondent's own testimony stating that the student loans were

dischargeable contradictory from his letter to Department of Justice. There also was an issue as to the amount owed. The Respondent claims \$51,000.00 in principal, yet \$91,000.00 in his letter. The Department claims \$81,000.000 in the statement of charges, yet \$108,000.00 judgment. However, the panel found that the exact amount was irrelevant since all agreed that the monies borrowed plus interest is owed.

The panel found testimony as to the Respondent's support obligations, business ventures and current application to activate the Respondent's New York license irrelevant.

The Respondent submitted a letter dated January 23, 1998 whereby he offered \$5,000.00 in settlement of this loan (Resp. Exh.U). Based on subsequent letters from U.S. Department of Justice, there is no evidence they even received that letter and the Respondent failed to follow up.

The panel found the Respondent's cavalier attitude about his debt which ultimately effected his license to practice medicine disturbing.

SUMMARY

The panel examined all penalty options. Their decision to revoke is based on the Respondent's deliberate non-compliance with Federal Regulation to repay any part of his student loans. The Respondent has shown a willful disregard to follow the advice of the U.S. Department of Justice or New York State Department of Health in attempting to make payment toward his loans. The Respondent failed to establish he attempted to have the loan discharged, separately as required by law in the Bankruptcy Court. The Respondent was aware of the grave consequence of his actions and failed to take any action.

PANEL'S DETERMINATION ON SPECIFICATION

Paragraphs 1, 2, 3, 4 is sustained

Charge that Respondent violated N.Y. Education Law Section 6530 by reason of his failing to comply with any agreement entered into to aid his medical education is sustained

ORDERED

Based upon the foregoing, IT IS ORDERED THAT:

1. Respondent's license to practice medicine in the State of New York is

REVOKED.

DATED: New York, New York

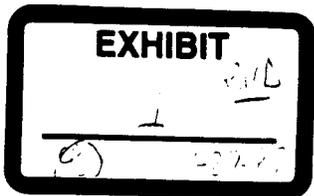
April 28, 1999



Dennis Garcia

Irwin Cohen, M.D.
David Sibulkin, M.D.

APPENDIX ONE



STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

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IN THE MATTER : STATEMENT
OF : OF
AVI ALEXANDER JACOBY, M.D. : CHARGES

-----X

AVI ALEXANDER JACOBY, M.D., the Respondent, was authorized to practice medicine in New York State on February 4, 1992 by the issuance of license number 188264 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine. His current address with the New York State Education Department is 230 Park Avenue, Suite 2240, New York, NY 10169.

FACTUAL ALLEGATIONS

1. Respondent, during the approximate period of 1981 through 1984, borrowed and agreed to repay approximately \$81,000 to aid his medical education under the Health Education Assistance Loan Program.
2. Respondent failed to comply with his agreement to repay the Health Education Assistance Loans, and in or around October 16, 1989, a judgment was entered against him in the amount of \$108,000.
(Judgment)
3. Respondent has failed to repay and/or make any

arrangements to repay the Health Education Assistance Loans.

4. Respondent, to date, with interest and/or penalties and/or late payments, owes Health Education Assistance Loans in excess of \$213,000.

SPECIFICATION

Respondent is charged with professional medical conduct under N.Y. Education Law §6530(42) by reason of his failing to comply with any agreement entered into to aid his medical education, in that Petitioner charges:

1. The facts in Paragraphs 1 and/or 2 and/or 3 and/or 4.

DATED: *January 11*, 1999
Albany, New York

Peter D. Van Buren
PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct